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नई दिल्ली, शनिवार, फरवरी 23, 1991/फाल्गुन 4, 1912

No. 6]

NEW DELHI, SATURDAY, FEBRUARY 23, 1991/PHALGUNA 4, 1912

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रचा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (III) PART II—Section 3—Sub-section (III)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 17 जनवरी, 1991

आ. अ. 29 —निर्वाचन आयोग, 1990 की निर्वाचन अर्जी
सं. 2 में केरल उच्च न्यायालय, एरनाकुलम के तारीख 31-8-90
के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का
43) की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करना
है।

(संलग्न निर्णय अंग्रेजी में छपा है)

आदेश से,

सी. एल. रोज, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 17th January, 1991

O.N. 29.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgment of the High Court of Kerala at Ernakulam dated 31-8-1990 Election Petition No. 2 of 1990.

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:

The Hon'ble Mr. Justice K. G. Balakrishnan.

343 GI/91—1

Friday the 31st August, 1990/9th Bhadra, 1912

Election Petition No. 2 of 1990

PETITIONER:

V. S. Vijayaraghavan, Vadakkumpuram House, Erimayur, Palghat.

By Advs. M/s. K. K. Gopinathan Nair, M. Lalitha Nair, S. M. Prem, T. S. Rajaseenan and M. I. Shanavas.

RESPONDENTS:

1. A. Vijayaraghavan, Communist Party of India (Marxist), District Committee Officer, College Road Palghat.

2. S. Abdulkareem, 10/410, Veterinary Hospital Road, Palghat.

3. Alathil Ishaq, S/o Ishaq, Pothuvachola Mohammed, Alathil House, (P.O.) Vazhampuram, Via. Karakurissi.

4. Kassim Mohammedkutty, S/o Mohammedkutty, Near Narikuthy Mosque, Parakunnani P.O. Palghat.

5. N. Krishnakumar, Palliyath House, P.O. Thenkurissi, Alathur Taluk, Palghat District.

6. T. Chandrasekharan, B.J.P. Officer, Market Road, Palghat.

7. T. P. Joy, Thelappilly Chorakode, Peruvemba P.O., Palghat.
8. V. L. Dora, Ayyappunkavu House, Vandithavalam P.O. Palghat.
9. Nanchan, S/o Mallan, Cholayur, House No. 2/163, P.O. Palghat.
10. T. K. Prabhakaran, Ext. Dist. Secretary RSP (S), Court, Road, Palghat.
11. P. P. Menon, Devaprabha, T.B. Road, Palghat.
12. Edakkazhiyur Velayudhan, Janatha Party Office, Edakkazhiyur, Palghat.
13. Kavassery Sankaran, S/o Koppan Muthalakulam Harijan Colony, P.O. Kavassery, Palghat.

By Advs. M/s. S. Narayanan Poti, M. Hemalatha, K. Balachandran, C. E. Unnikrishnan and K. K. Krishna Pillai.

This Election Petition having been finally heard on 27-8-90 the Court on 31-8-90 delivered the following :

K. G. BALAKRISHNAN, J.

E.P. No. 2 of 1990

JUDGMENT

The petitioner contested as a candidate for the Lok Sabha seat from No. 7 Palghat Parliamentary Constituency. Respondents 1 to 13 were the other contesting candidates. Polling was held on 22-11-89 and the result was declared on 26-11-89. The petitioner secured 347115 votes and the first respondent secured 3,48,401 votes. The first respondent was declared elected with a margin of 1286 votes than his nearest rival.

2. The Palghat Parliamentary constituency consists of 7 legislative assembly constituencies and there were 902 polling stations in the constituency. The total number of votes according to the electoral rolls of the constituency was 9,57,847. Among the contesting candidates the petitioner belonged to Indian National Congress (I) and the first respondent was a candidate sponsored by the Communist Party of India (Marxist). The petitioner seeks to declare the election of the first respondent as void and for a further declaration that the petitioner be declared as elected.

3. In the petition, the petitioner has alleged that several mal practices and corrupt practices and manipulations were done during the process of the election. Petitioner alleges that counting of votes was not done in accordance with the Rules and the entries made in form 16 and form 20 are not genuine and truthful. The form 16 ballot paper account was not properly filled up. The total number of ballot papers to be found in the ballot box as mentioned in column 5 of form 16 was different from the total number of votes counted as mentioned in form No. 20. This variation has happened in respect of several polling stations. The petitioner alleges that in polling station No. 74/48 of Malampuzha L.A. segment the figure 773 in form No. 16 is the total number of ballot papers to be found in the ballot box, but in form No. 20 as against the number of votes counted figure 957 has been mentioned. The difference of 184 votes is a clear indication that serious mal practices and distortions were made in the counting of votes. There were similar variations in the case of polling station No. 73/48 of the same L.A. segment. In polling station No. 119/51 of Kollamkode segment and in polling station No. 99/49 of Palghat L.A. segment there were similar discrepancies. There were 84 such instances of variations and discrepancies. These conflicting figures in the two forms have materially affected the result of the election for the simple reason that arbitrary number of votes has been attributed to the first respondent and the first respondent was declared elected on such fanciful and patently conflicting figures and this amounts to improper reception of votes coming within section 100(1)(d)(3) of the Representation of

the People Act, 1951 (hereinafter called the 'Act'). The petitioner has alleged that there were discrepancies in the figures entered in form No. 20 and the petitioner has given a detailed statement as Annexure III.

4. The petitioner alleges that there were serious illegality in the case of counting of postal votes. As per the entry in Part II of form 20 there were 2053 postal ballot papers and according to the petitioner this figure is not correct and the total number of postal ballot papers received by the Returning Officer was 2363. This is evident from the stamp account maintained by the Returning Officer. The Returning Officer did not count 310 postal ballot papers on an untenable ground that the declaration by the electoral under Rule 23(1)(a) of Conduct of Election Rules, 1961 (for short the Rules) in form No. 13A did not contain the seal of the attesting officer. One postal bag containing several postal ballot papers was lying in the R.M.S. post office at Palghat Junction without being delivered to the Returning Officer. The Returning Officer did not take steps to collect these ballot papers.

5. Petitioner requested for a recounting of the votes. The petition was personally handed over to the Returning Officer at 11 a.m. A similar request was made by one A. Kumaraswamy, who was the counting agent of 11th respondent. The returning officer rejected the petition on untenable grounds.

6. Several presiding officers of various polling booths did not furnish to the petitioner's polling agents true copies of the entries made in the ballot paper account and thus they violated Rule 45(2) of the Rules. In the Palghat Parliamentary constituency a total number of 6656 votes were rejected as invalid votes. Three thousand votes cast in favour of the petitioner were rejected on the ground that the marks affixed against his name were indistinct. The rejection of these votes is illegal and there was violation of Rule 56(2) of the Rules.

7. There was violation of Rule 38 of the Rules. The presiding officer of the polling booth did not sign on the reverse side of the ballot paper. In polling station No. 42 and 61 of Sreekanthaswaram L.A. segment 100 such ballot papers were issued. Out of 100 ballot papers 50 were issued in polling station No. 42 out of which the first respondent secured 36 votes. These votes should not have been counted in his favour. The treating of such votes as valid has materially affected the result of the election in so far as the first respondent is concerned. The counting agents of the petitioner came to know of this irregularity and they raised objection at the time of counting. But the objections were overruled and they were treated as valid votes.

8. In several cases open votes were cast by the presiding officer without permitting the companions of the infirm voter. In polling station No. 99 of Malampuzha L.A. segment, the presiding officer thus cast four votes in the name of 4 infirm voters. The petitioner has mentioned the details in paragraph 19 of the petition.

9. The petitioner alleges that there were several cases of impersonation. One Bhanu aged 22 cast vote in polling booth No. 23/48 in the place of one Girija Unnikrishnan. The polling agent Parameswaran challenged the identity of Bhanu and convinced that it was a case of impersonation. But the imposter was allowed to vote without requiring her to adduce evidence in proof of her identity. This is in violation of Rule 36 of the Rules.

10. There were instances where the tendered votes were put in the ballot box and counted contrary to Rule 56(6) of the Rules. In polling station No. 20 of Mannarghat L.A. segment and polling station No. 85 and 92 of Malampuzha L.A. segment and polling booth No. 156 of Alathur L.A. segment one vote each was put in the box and counted in violation of Rule 56(6).

11. One Abbas Abdul Kadar, a Government employee, was on election duty in polling booth No. 47 of Mannarghat L.A. segment. His name was included in the electoral

roll of polling station No. 98 of 47 of Mannarghat L.A. segment. In spite of the fact that the said officer was on election duty he had voted at polling station No. 42. The Presiding Officer of polling station No. 98 allowed an impersonator to vote in the name of said Abbas Abdul Kadar and this is a clear case of improper reception of a vote.

12. In polling station No. 108 of Alathur L.A. segment as against one Muthuvelayudhan (Sl. No. 7C3) an impersonator voted and Muthuvelayudhan was dead long before the election.

13. There are four instances where impersonators cast votes in the name of persons who were in Gulf countries. The details are shown in Paragraph 25 of the election petition.

14. The name of one Kulangara Raveendranathan was included in the electoral rolls in respect of polling station Nos. 5 and 6 of Sreekrishnapuram L.A. segment and votes were cast in his name in both polling stations. In polling station No. 82 of Sreekrishnapuram L.A. segment and in polling station No. 6 of Malampuzha L.A. segment 4 persons, who were under the age below 18, had cast their votes.

15. The time of the polling was fixed from 8 a.m. to 5 p.m. However, in 18 booths, the ballot boxes were full in the course of the day but they were not replaced promptly and there was delay of two hours for replacement of the ballot boxes. This has adversely affected the polling and several voters returned without exercising their votes and this is in violation of Rules 66 and 15 of Conduct of Elections Rules, 1961. The particulars of the various polling stations are mentioned in paragraph 18 of the election petition.

16. According to the petitioner all these illegalities and malpractices have materially affected the result of the election. The number of votes rejected as invalid was 6656. The marginal difference between the petitioner and 1st respondent is 1/5 of the rejected votes and, therefore, the votes are to be recounted.

17. The petitioner has alleged that the 1st respondent resorted to corrupt practices. There were appeals from 1st respondent, his agents and supporters to vote for the national front, which was having an alliance with C.P.I. (M) on the ground of religion, caste and community. There were also attempts to promote feelings of enmity and hatred between different citizens in the name of religion, particularly between Hindus and Muslims. The 1st respondent issued pamphlet in Palaghat Constituency reproducing a statement issued by the Imam of Delhi Syed Abdullah Bukhari. The pamphlet was printed by Vardhini Printers Mannarghat at the instance of the 1st respondent. In the pamphlet Imam alleged that the majority, i.e. Hindus, massacred the minority, i.e. Muslims from Malvana to Bhagalpur. In the pamphlet it was also stated that thousands of Sikh were murdered after the assassination of former Prime Minister Smt. Indira Gandhi. This was clearly intended to persuade the Muslims not to vote for the petitioner who belongs to Congress-I. Immediately before the election, the workers of CPI (M) led by P. K. Sasi, Secretary of CPI (M), Mannarghat distributed the pamphlets to various Muslim houses in Mannarghat. The publication of the pamphlet was intended to turn the Muslim voters against the petitioner in the name of religion by promoting feelings of enmity and hatred between them. Yet another pamphlet was printed and distributed reproducing a news item published in Madhyamam daily dated 12-11-89 which stated that Imam of Delhi had accused the Congress-I and Hindus of massacring the Muslims and that the Muslims should not vote for the Congress-I. This was highly provocative pamphlet promoting feelings of enmity and hatred between Hindus and Muslims.

18. Shri E. M. Sankaran Namboothiripad, of the General Secretary of the CPI(M) wrote two articles in "Derabhimani" daily, the official mouth-piece of the CPI (M) appealing the Christian and Muslim electorate to vote against the Congress-I candidate. The publication of these two articles

was also intended to promote feelings of enmity and hatred between different sections of the citizens in the name of religion thereby attracting the provisions of corrupt practice as defined in Section 25 of the Representation of the People Act.

19. Shri T. Sivadasa Menon, the Electricity Minister of the Government of Kerala, who is a member of the CPI (M) gave electric supply for the first time to Varagampady, Snolayar and Siruvani estate areas in Attappady on the eve of the election, i.e. 20-11-89. This was done deliberately to influence the voters of the areas which amounts to undue influence and interference in the free exercise of electoral right. The Electricity Minister committed this corrupt practice with the consent of the 1st respondent. There was a meeting at about 9.30 a.m. on 20-11-89 at Snolayar. The Electricity Minister and one Sayed Anavi, Secretary of the CITU in Paigat District spoke in the meeting that the distribution of electricity to that area was solely because of the efforts and initiative of the CPI(M) and all the people must vote for the 1st respondent. C.I.T.U. is the trade union labour wing of the CPI (M).

20. The petitioner also alleges that a high power committee of the Union Minister for Environment had acquired Kurarayatti and Karappara Hydro-Electric Project for meeting the water and power requirements of Paigat. This thing was reported in the Hindu daily dated 13-11-89. The clearance of this project was due to the constant efforts of the petitioner. In order to influence the voters against the petitioner, the Electricity Ministry and the office of the Chief Minister of Kerala issued press statements to the effect that the Central Government had not given clearance for the project. This was a false statement to prejudice the voters against the petitioner.

21. Many of the polling officers were biased against the petitioner and some of them were witnesses in a case pending before the Commission of Enquiry appointed to inquire into the alleged use of force by the police at the Palghat Collectorate on 17-11-88. The petitioner was seriously injured and hospitalised in that lathi-charge. These officers gave evidence against the petitioner and the congress party. These witnesses were polling officers and they committed malpractices in the election process to see that the petitioner was defeated. The names are mentioned in paragraph 36 of the election petition. The petitioner, for the above reasons, sought to declare that election of the 1st respondent to Lok Sabha is void and the petitioner be declared as duly elected candidate from No. 1 Palghat Parliamentary Constituency. The petitioner also prayed for recounting of the entire votes polled by the candidates including the rejected votes, postal ballots and tendered votes.

22. The 1st respondent alone contested this proceedings. All other respondents were set aside. The 1st respondent filed written statement denying the allegations in the petition. According to the 1st respondent the election petition is not maintainable and the same is liable to be rejected in limine. It is also alleged that the petition has been filed for harassing the 1st respondent. The allegations made under grounds 1 to 13 regarding the alleged manipulations in counting, illegalities in the postal ballot papers, irregularities in polling, impersonation to vote against the names of dead persons or absentees etc. stated in the election petition are denied and they are untrue and baseless. There was no irregularity, manipulation or fraud in the counting of votes. It was conducted correctly and fully in accordance with the Representation of the People Act and the Conduct of Election Rules. The result of the election has not been affected by any illegality and the Returning Officer was fully justified in declaring the 1st respondent as the returned candidate from Palghat Lok Sabha Constituency. The averments made in ground No. 3 in relation to the discrepancies in Form No. 16 and Form No. 20 are not admitted. The discrepancy, if any, can only be due to clerical errors and it cannot affect the result of the election. The averments are vague and do not disclose in what manner the said discrepancy adversely affected the petitioner. No objection on these scores were raised by the petitioner or his election agents or his counting agents. This ground is therefore an after thought and is only a device to take undue advantage of some discrepancies. The allegations raised in ground No. 8 are not correct. The result sheet

was prepared fully in accordance with the rules after the counting was over. The complaint of irregularities in respect of counting of postal ballot papers raised in ground No. 10 and 11 are wholly baseless. All the valid postal ballot papers have been counted and distributed to the candidates for whom the said votes have been polled. The 310 postal ballot papers were not opened because the Form 13-A did not contain either the signature of the voter or in some cases the signature of the Attesting Officer. The postal ballot papers received after the commencement of the counting have been rightly rejected by the Returning Officer. The Returning Officer is only concerned with the ballot papers which have been received by him at the commencement of the counting of votes. The allegations raised in ground No. 12 are not true. The request for recount was rightly rejected by the Returning Officer. The application of the petitioner and that of the counting agent of Sri P. P. Menon did not contain any reason whatsoever to justify the recount. The complaint in the election petition that there are discrepancies between the total number of votes and the votes distributed between the candidates is untrue and untenable. No valid vote was rejected. Doubtful votes from all the segments were put in separate compartments and decision was taken by the Asst. Returning Officer in the presence of the counting agents of the candidates. The fact that 6,656 votes were rejected afford no basis for an inference that there would have been improper or unlawful rejection of valid votes. It is denied that there was violation of Rule 38. If the signature of the Presiding Officer was not made on the ballot paper that will not entail a rejection of the ballot paper in which the voter has exercised his right to choose his candidate. The allegation that the Presiding Officer himself had cast vote for any infirm voter is denied. The allegations in ground No. 19(a) are not correct. A voter is not to be disallowed to exercise his right to vote simply because his identity is challenged. The complaints made in grounds 20, 21 and 22 regarding certain tendered votes is contrary to facts. The contention regarding impersonation of Abbas Abdul-khader as mentioned in ground No. 23 is baseless. The allegations made in grounds 24 and 25 regarding impersonation are not true. In any event it has not affected the result of the election so far as the 1st respondent is concerned. The double voting by one Kolangara Raveendranathan is denied. Even if it be so the invalidity of both of his votes will not in any manner affect the result of the election. The allegations made in ground No. 28 are baseless and irrelevant. The 1st respondent is not aware of any delay having taken place in any of the polling stations for want of ballot boxes. The allegations made in ground No. 29 for taking inspection of ballot papers are wholly untenable. Neither the petitioner nor his agents raised any objection in respect of the counting in any of the segments. The details of discrepancies furnished in paragraph 30 have not really affected the result of the election. The allegations of corrupt practices made in paragraphs 31 to 36 are wholly untrue and baseless. There was no attempt to promote feelings of enmity and hatred between different citizens on the ground of religion. The pamphlet produced as Annexure 15 was not got printed in Vardhini Printers, Mannarkad at the instance of the 1st respondent or his political party. It was not distributed among Muslim voters or any workers led by P. K. Sasi. The publication of the pamphlet in Deshabhimani daily was not with the consent of the 1st respondent. The 1st respondent was fully busy in addressing public meetings and doing other necessary acts for his election. He had no occasion to read the newspapers. The 1st respondent has nothing to do with the publication of the pamphlet in Madhyamam daily. The articles attributed to Sri E. M. S. Nambodiripad were published in the Deshabhimani dated 16-11-89 and 17-11-89. The articles do not constitute corrupt practice under Section 123(3) or (3-A). That was only bonafide criticism made of the Government. It is denied that the Minister for Electricity Shri T. Sivadasa Menon gave electricity to Sholapur and Siruveni estate areas on the eve of election to influence voters. Such electricity connection would have been given in the normal course after going through the normal procedure. The above statement regarding the appeal to the voters by the Minister or Savyd Alavi to vote for the 1st respondent is completely false. The averments in paragraph 36 of the petition are not correct. The reference made by the Chief Minister that the Central Government had not given

clearance for the Project is not correct. The report in Madhyamam (Annexure 20) was not made with the consent of the 1st respondent or his election agent or his supporters. The allegations in paragraph 36 that certain polling officers and presiding officers are biased against the petitioner is baseless. The petitioner had not raised any objection to their functioning. On the above pleadings the following issues were framed for trial.

1. Whether there are differences between the total number of ballot papers mentioned in column 5 of Form 16 and the total number of votes cast mentioned in Form 26 in respect of 84 polling stations and was it the result of manipulations as alleged in Paragraph 3 of the petition? If so, is the election of the first respondent liable to be declared valid on the ground of discrepancies in Form 16 and Form 20?
2. Did the Returning Officers fail to collect one bag of postal papers from R.M.S. post office and thereby violated Rule 23(4)?
3. Does Annexure 3 reveal serious error in counting and whether it affected the result of the election?
4. Did the Returning Officer reject 310 postal ballot papers on the ground that the declaration of the elector did not contain the seal of the Attesting Officer? Was it an illegality on the part of the Returning Officer?
5. Were any valid votes rejected as mentioned in paragraph 17 of the petition?
6. Was there any impersonation and the challenge of the identity of voters was wrongly over ruled as mentioned in paragraph 19(a) of the petition?
7. Whether there were any cases of double voting as alleged in Ground 26 of the election petition?
8. Was there any violation of Section 56 and Rule 15 as there was omission to replace the ballot boxes when they became full in 18 booths?
9. Did the first respondent, his agent and supporters appeal to the voters in the name of religion, caste and community and thereby committed corrupt practice under Section 123(3) of the Act?
10. Did the first respondent commit corrupt practice under Section 123(2) of the Act?
11. Did the first respondent commit any corrupt practice as alleged in paragraph 35 of the petition?
12. Did the polling officers commit any malpractice which affected the result of the election?
13. Was there not violation of Rule 40 when the Presiding Officer cast the votes of infirm voters?
14. Were not votes cast in the name of dead persons, persons abroad and under-aged voters improperly received?
15. Is the election of the first respondent liable to be set aside for any of the reasons mentioned in the petition?
16. Should there not be inspection and recounting of votes for all or any of the reasons mentioned in the petition?
17. What is the order as to costs?

23. Issues 2 and 4.—These two issues relate to the counting of postal ballot papers. In paragraph 10 of the petition it is alleged that many of the valid postal ballot papers were rejected at the time of counting. The petitioner

also alleged that 310 ballot papers were not even opened by the returning officer and thereby he violated Rule 26 of the Rules. The returning officer was examined as PW-1. He deposed that form 13-A declaration by the elector was not properly attested and in many cases the attesting officer had not affixed his seal. In some cases the attesting officer simply signed the attestation form and did not even give the designation and address. The various rejected postal ballot papers are marked in the proceedings. The learned counsel for the petitioner contended that in the case of attestation the signature of the attesting officer alone is necessary and that the Rules do not provide that there should be the seal of the attesting officer. PW-1 deposed that he was unable to discern whether the attestation was done by a Gazetted Officer or whether the signature itself was true and genuine. Of course, if the seal of the office is affixed that may give a colour authority to the attestation. It is true that the Conduct of Election Rule 1961 do not provide that the attestation should be accompanied by the seal of the concerned officer. PW-1 deposed that he was not able to know whether the attestation was done by a proper authority and only in those cases he had rejected the ballot papers. It may be remembered that the rejection of the ballot papers was done in the presence of the counting agents of the respective candidates. None of the counting agents of the candidates raised any objection regarding this. Even in the petition filed for recounting no objection was raised regarding the rejection of the postal ballot papers. Therefore, I hold that the rejection of the postal ballot papers for want of seal was done properly and it has not materially affected the result of the election.

24. Another contention regarding the rejection of the postal ballot papers is that in many cases the serial number of the ballot papers given in form 13-A did not tally with the serial number of ballot papers given in form 13-B. Form 13-A is the declaration of the elector. Form 13-B is the small cover containing the ballot paper. As per the procedure of voting through postal ballot system the elector has to cast his vote in the ballot paper and insert the same in form 13-B cover. This form 13-B is to be accompanied by form 13-A declaration. The declaration as well as the small cover containing the ballot paper are to be put in form 13-C cover. The returning officer while opening form 13-C cover must first compare the serial number of the ballot paper given in form 13-B cover and form 13-A declaration. If the serial number of the ballot paper does not tally with the ballot paper number in form 13-B the postal ballot paper is to be rejected and the form 13-B cover is not to be opened by the returning officer. The learned counsel for the petitioner would contend that in many cases the postal ballot papers were rejected on flimsy grounds that the serial number of the ballot papers in form 13-B did not tally with the serial number of ballot paper in form 13-A and it was pointed out that in some cases form 13-A declaration and form 13-B cover got mixed up on the table of the returning officer and that he had simultaneously handled several form 13-C covers together and this led to the mixing up of form 13-A with form 13-B of some other cover. PW1 was examined on this aspect. He deposed that under no circumstances he had handled more than one form 13-C cover at a time and there was no possibility of any form 13-A and B mixing up with form 13-A and form 13-B of some other ballot paper. I have perused some of the postal ballot papers which were rejected for these reasons. In one case the ballot papers were attested by the same officer and form 13-A and B got mixed up. It might have happened due to the negligence of the voter. In view of the definite assertion by PW1 that had handled only one ballot paper at a time, the contention of the petitioner that the rejection of the postal ballot papers on this ground is illegal cannot be accepted. I find no reason to reject the evidence of PW1. If the serial number of the ballot paper in form 13-B and form 13-A declaration did not tally each other the returning officer has no other go than to reject the same.

25. Another contention raised by the petitioner is that 310 postal ballot papers were not opened by the returning officer. PW1 has given valid reasons for this. He deposed that counting began at 11 a.m. on 26-11-1989 and after the counting

began he received 310 postal ballot papers. Under Rule 54A(2) of the Rules no cover in form 13C received by the returning officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. In view of this specific rule PW1 was justified in rejecting the 310 postal ballot papers received after the commencement of counting of postal ballot papers. Therefore, under issue No. 2 and 4 I hold that the rejection of the postal ballot papers for various grounds was proper and legal and that it has not materially affected the result of the election. There was also no violation of Rule 23(4) of the Rules.

26. Issue No. 5.—In paragraph 17 of the petition it is alleged that 6654 votes were rejected by the returning officer on flimsy and legally unsustainable grounds and thus he violated Rule 56(2) of the Rules. The allegation in paragraph 17 of the petition is too vague and the petitioner has not mentioned the various grounds on which these votes were rejected. Under Rule 56 the ballot paper is liable to be rejected if it bears any mark or writing by which the elector can be identified or if it bears no mark at all to indicate the vote or if it bears a mark elsewhere than on or near the symbol of one of the candidates on the face of the ballot paper or if it bears a mark made otherwise than with the instrument supplied for the purpose. The ballot paper is bound to be rejected if the votes are given on it in favour of more than one candidate or if the mark indicating the vote thereon is placed in such manner as to make it doubtful to which candidate the vote has been given. If the ballot paper is found to be spurious or damaged or mutilated, then also the ballot papers cannot be treated as valid ones. The returning officer deposed that in this case the ballot papers were rejected for various reasons. It may be remembered that the petitioner was represented through the counting agent at the time of counting. There were as many as 11 candidates and all these candidates were represented through their counting agents. There is no case for the petitioner that he had raised any objection before the returning officer regarding the rejection of any ballot papers. At the time of counting the counting supervisors set apart the doubtful votes and they are scrutinised by the returning officer in the presence of the counting agents. Each ballot paper was thus examined by the returning officer and then only it is/was rejected. Merely because the number of invalid votes are 6656, no adverse presumption could be drawn against the process of the electoral system. It could only be assured that these ballot papers were rejected as they satisfied any of the grounds mentioned in Rule 56. Therefore, under issue No. 5 I hold that no valid votes were rejected without any reason. Issue No. 5 found accordingly.

27. Issue No. 6.—In paragraph 19 in the petition it is alleged that there was impersonation by one Bhanu to vote in the name of one Girija Unnikrishnan and that the petitioner's agent challenged the identity of the said Bhanu, but the presiding officer permitted the imposter to exercise her vote. In order to prove this allegation the petitioner produced Exts. A7 and A8 documents. Ext. A7 is a receipt issued to PW3 Parameswaran who challenged the vote of Bhanu. Ext. A8 is a copy of the petition given by one E. Kannan. In the petition it is alleged that Bhanu daughter of Janu came to exercise vote in the name of Girija Unnikrishnan. Apart from Exts. A7 and A8 there is nothing in evidence to show that Bhanu who cast her vote really impersonated. The petitioner could have proved the impersonation by examining Girija Unnikrishnan. No attempt was made to examine this alleged voter. The evidence of PW3 is not sufficient to hold that there was impersonation. If the vote is challenged by any of the polling agents, the presiding officer will make summary enquiry. The petitioner has no case that the presiding officer did not conduct such an enquiry. The petitioner has also no case that he or his agent produced documents to show that the woman who came for voting was not Girija Unnikrishnan, but somebody else. In the absence of such concrete evidence it cannot be said that there was impersonation. Issue No. 6 is found accordingly.

28. Issue No. 7.—In paragraph 26 of the petition it was said that in polling station No. 5 of Shrikrishnapuram L. A. segment one Kulangara Ravindranathan was a voter as against

serial number 276, and as against serial number 846 of polling station No. 6 of Shrikrishnapuram L. A. segment very same Kulangara Ravindranathan was voter and both votes were cast by the voter. Petitioner has not adduced evidence to substantiate this allegation. The returning officers of the respective polling booths were not examined to prove this fact. I hold that there was no double voting as alleged by the petitioner. Issue No. 7 is found accordingly.

29. Issue No. 8.—The petitioner has alleged that in certain polling booths ballot boxes were not supplied in time and that many of the voters could not exercise their franchise and this has resulted in the violation of section 56 of the Act. There is absolutely no evidence to prove this allegation. PW1 was asked regarding the supply of ballot papers to the polling booths. He deposed that enough ballot boxes were distributed to various polling booths and he also said that ballot boxes were kept in reserve and in no polling stations the voting was delayed due to want of ballot boxes. I find no reason to reject the testimony of PW1. This issue is found against the petitioner.

30. Issue No. 9.—The petitioner alleged that the first respondent, his agent and supporters appealed to the voters in the name of religion, cast and community and thereby committed corrupt practice under section 123(3) of the Act. The main allegation of the petitioner is that certain pamphlets were distributed in the constituency at the time of election and this pamphlets were printed at the instance of the first respondent and his party and in one such pamphlet Delhi Imam Abdulla Bhukhari made an appeal to the voters by saying that the Hindus massacred the minorities viz. the Muslims and Sikhs of Bhagalpur and other places and this was after the assassination of the former Prime Minister. According to the petitioner the pamphlet was published to persuade the Muslims not to vote for the petitioner who belonged to Congress (I) party. The petitioner also alleged that the pamphlets were printed in Desabhimani daily paper and P. K. Sasi, Secretary of CPI(M), Mannarghat distributed the pamphlets on behalf of the first respondent. The petitioner also alleged that the pamphlet of Delhi Imam was published in Madayamam daily news paper dated 12-11-89 and the Imam accused Congress (I) party of having massacred Muslims and that the Muslims should not vote for Congress (I) party. In paragraph 33 the petitioner alleged that the All India General Secretary of C.P.I.(M) Shri E.M.S. Namboodiripad wrote two articles and published in Desabhimani daily paper dated 16-11-89 and 17-11-89 and the object of publication of these two articles was to appeal to the Christian and Muslim voters to vote against Congress (I) party.

31. Even though the petitioner raised all these contentions in the petition, no evidence was adduced to prove these facts. The first respondent denied having published any pamphlets. There is nothing in evidence to show that the first respondent had any knowledge about the publication of these pamphlets. There is also no evidence to show that P. K. Sasi, the Secretary of the C.P.I.(M) Mannarghat distributed the pamphlets in the parliamentary constituency. As regards the publication of two articles by Shri E. M. S. Namboodiripad, there is no evidence to show that the first respondent knew about the publication of these articles and he was instrumental for the same. In the absence of proper evidence I hold that the first respondent has not committed any corrupt practice as alleged in paragraphs 32 and 33 of the petition. This issue is found accordingly.

32. Issue No. 10 and 11.—In paragraph 35 of the petition it is alleged that the Electricity Minister and the Chief Minister issued certain statements to the effect that the Central Government had not given clearance for the Kuriyarkutty Karapra hydro electric project and this was a false statement to prejudice the voters against the petitioner and the same was done at the instance of the first respondent. The petitioner produced a copy of the 'Hindu' daily dated 13-11-89 to prove that the statement made by the Electricity Minister and the Chief Minister was false. There is nothing in evidence to show that the Central Government gave clearance to Kuriyarkutty-Karapra hydro electric project. A High Power Committee had visited the spot and submitted a report and some time thereafter the Central Government gave clearance. There is nothing

in evidence to show that the Electricity Minister and the Chief Minister issued false press statements. There is also nothing in evidence to show that the first respondent was in any way responsible for issuing any such statement by the ministers concerned. Therefore, it is incorrect to say that the first respondent has committed corrupt practice under section 123(2) of the Act. Issues 10 and 11 are found accordingly.

33. Issue No. 12.—The petitioner alleged that the polling officers committed several mal-practices and the same had materially affected the result of the election. The Petitioner has not alleged the various mal-practices committed by the polling officers. In paragraph 36 of the petition he would allege that two polling officers of Palghat and Malampuzha L.A. segments and two polling officers of polling station No. 76 and 12 of the Palghat and Malampuzha L.A. segments respectively were enmity towards him and that they acted against the interest of the petitioner. The petitioner would contend that these four persons were witnesses in a case pending before an enquiry commission, of which the petitioner is an affected party. The enquiry related to the use of police force in the premises of the Palghat collectorate on 17-11-88. The petitioner's case is that he was seriously injured and hospitalised in the lathi charge and the 4 witnesses whose names are given in paragraph 36 of the election petition were cited as witnesses to depose against the petitioner. There is no merit in the allegation of the petitioner. The petitioner admitted that he came to know of the inclusion of their names for election duty. He did not raise any objection. He could have filed a petition before the election commission to drop these officers from participating in the election duty. The petitioner has also not adduced any evidence to prove that they have done any illegality against the petitioner. No such complaints were filed by the petitioner either before the Assistant Returning Officer or the Returning Officer. The petitioner also could not give any single instance where these officers deviated from the path of rectitude and committed corrupt practice to help the first respondent. Issue No. 12 is found against the petitioner.

34. Issue No. 13.—The petitioner has alleged that in polling station No. 99 of Malampuzha L.A. segment the presiding officer did not allow the companions to vote on behalf of the infirm voters and the presiding officer herself exercised the vote. The presiding officer of the concerned polling booth was examined as PW7. She deposed that in some cases the infirm voters themselves asked her to exercise vote on behalf of those voters as they could not affix the seal using their right hand. The specific case pointed out by the petitioner is of one Chinnammal, who was voter No. 855. PW5 claimed to be the companion of Chinnammal and according to him he took her to the polling booth and in spite of his demand to exercise vote on behalf of Chinnammal, the presiding officer did not allow him to do so. PW7 was the presiding officer in booth No. 99 of Malampuzha L.A. segment. She has admitted that she exercised vote on behalf of blind Chinnammal. But she denied the suggestion that the companion wanted to exercise vote. In the case of four other infirm persons also PW7 exercised franchise, as they could not use their hands due to disability. On the basis of the evidence of PW5 it cannot be said that there was any irregularity. No illegality has been committed in this regard. Issue found accordingly.

35. Issue No. 14.—In paragraphs 19A to 27 of the election petition the petitioner has pointed out the instance of impersonation, double voting and voting by underaged voters. To prove these allegations PWs 8 to 14 were examined. PW8 was examined to prove that there was impersonation and double voting PW-8 Abbas Abdul Khadar deposed that he was an electrician working in the Public Works Department at Kanjirappuzha and he was on election duty in polling booth No. 42 of Mannarghat segment and he exercised his vote in the very same booth by making use of Ext. X-131 election duty certificate. He was voter No. 909 in polling booth No. 98 of Mannarghat L.A. segment. He was voter No. 8 in the supplementary list. The petitioner's case was that somebody else had cast vote against serial No. 8 in polling booth No. 98 of Mannarghat L.A. segment. This contention is not correct. PW9 is the presiding officer in polling booth No. 98 of Kanjirappuzha in Mannarghat L.A. segment. He deposed that Abbas Abdul Khadar, voter No. 8 in supplementary list, was given election duty certificate and no ballot

paper was issued to him. In view of the evidence of PW-8 and 9 the allegations in the petition are not sustainable.

36. PWs 10 to 14 were examined to prove that they were voters in various constituencies and they had exercised tendered votes as somebody else had voted in their name. The evidence of these persons by itself is not sufficient to show that there was widespread impersonation. These may be cases of mistaken identity. It may be noted that there would be polling agents of the respective candidates in the polling booth. If they had any suspicion regarding the identity of any voter they can very well raise their objection. The fact that other persons could exercise vote in the name of PWs 10 to 14 may be due to some mistakes regarding identity. It is important to note that the evidence of these voters itself would not prove that they are the real persons. I am not inclined to hold that there was large scale impersonation by voters.

37. The petitioner has alleged that there were some under-aged voters and the names of some dead persons were also included in the voter's list. The petitioner is not entitled to challenge the voters' list in these proceedings. Every person whose name is included in the voters' list is entitled to cast their vote. The validity of the electoral roll is not open to challenge in an election petition.

38. Issue Nos. 1, 3, 15 and 16.—The learned counsel for the petitioner seriously contended that there were serious irregularities in the conduct of election and the entries in various forms viz., form 16 and 20 are wrong figures and therefore the total number of votes declared to have been secured by each candidate does not reflect the will of the electorate and a fresh inspection and recounting of the votes alone would cure these defects. The counsel points out that the figures given in form 16 and 20 are fictitious and unreal, and to support this contention the counsel drew my attention to the various mistaken entries in form 20 and form 16. The petitioner has filed a separate petition for recounting. In support of this petition a detailed affidavit has been filed by the petitioner. To amplify these allegations further the petitioner has also filed a supplementary affidavit. In both these affidavits the petitioner has alleged that in many cases total number of votes counted varied from the total number of votes distributed among the various candidates. So also, there was discrepancy between the total number of votes to be found in the ballot box and the total number of votes counted. The main question that arises for consideration is whether these discrepancies and mistakes are sufficient to order inspection of the ballot papers.

39. In the election petition the petitioner has alleged that there are various errors in the figures in form No. 20. Form No. 20 relates to the final declaration of result. In the affidavit filed in support of C.M.P. No. 3288/90 the petitioner has mentioned the errors in form No. 20. At the instance of the first respondent the original form 20 was summoned and it was marked as X-147. On a perusal of Ext. X-147 it can be seen that the allegations in the affidavit regarding the errors in respect of figures in form 20 are not correct. Ext. X-147 would show that some mistakes had crept in Ext. X-114 which is a copy of form 20 sent by the asst. returning officer to the returning officer. It seems that certified copies were issued to the petitioner on the basis of Ext. X-114.

40. The petitioner has pointed out six instances mistakes in form 20. As regards polling station No. 8 of Mannarghat L. A. segment the total number of valid votes were 749. However, in Ext. X-114 the total number of votes distributed was 751. This mistake occurred due to the fact that P. V. Arumugham, one of the candidates had not secured any votes from polling booth No. 8, whereas in Ext. X-114 it was shown that he had secured two votes. The mistake pointed out by the petitioner is explained satisfactorily by the figures given in Ext. X-147.

41. In respect of polling station No. 13 of Mannarghat L. A. segment the total number of valid votes were 782. However, the total number of votes distributed would give the figure 785. In this case also the mistake occurred since

the 6th respondent Chandrasekharan secured only 10 votes, but it was shown that he had secured 13 votes. So also, in polling booth No. 29 of Mannarghat L. A. segment the total number of valid votes were 783, however, the total number of votes distributed among the candidates was shown as 823 in Ext. X-114. This mistake also as due to the fact that P. V. Arumugham had secured only four votes, but it was shown as 44 votes in Ext. X-114. Therefore, it is not correct to say that there is mistake in the total number of votes distributed. The figure 783 was taken as the total number of valid votes and the mistaken entry, if any, in Ext. X-114 has not affected the result of the election.

42. In respect of polling station No. 94 of Mannarghat L. A. segment the total number of valid votes were 953. However, the total number of votes counted was shown as 951. That was because the 4th respondent Kasim Mohammedkutty and 5th respondent Krishna Kumar though did not secured any votes from this booth, it was wrongly shown that they had secured one vote each. This mistake had contributed the wrong figure.

43. Another major mistake pointed out by the petitioner's counsel is that there was a difference of 101 votes in respect of the polling booth No. 146 of Mannarghat L. A. segment. The total number of valid votes were 630. The number of votes distributed among the various candidates was shown as 531 as per the entry in Ext. X-114. The entries in Ext. X-147 would show that the petitioner had secured 343 votes and not 244 as shown in Ext. X-114. So also, the 3rd respondent Alathij Ishaq had secured one vote but that was not shown in Ext. X-114. The learned counsel for the petitioner would contend that not much reliance can be placed on Ext. X-147. I have perused the original Part II of form 16 prepared in respect of polling station No. 146 of Mannarghat constituency. That is marked as Ext. X-148 and it shows that the petitioner had secured 343 votes and that 3rd respondent had secured one vote. So the figures given in Ext. X-147 is correct and it tallied with form 16 Part II prepared by the presiding officer. Thus, the difference in the number of votes in respect of polling station No. 120 of Kollamgode L. A. segment also can be explained with reference to the figures given in Ext. X-147.

44. From the above facts it is clear that the errors pointed out by the petitioner and amplified in the affidavit filed in support of the civil miscellaneous petition 3288/90 are clerical mistakes, which do not affect the result of the election.

45. Another set of mistakes pointed out by the petitioner is the discrepancy between the figure in form 16, i.e. the ballot paper account, and the total number of votes counted as shown in form No. 20. In most of the cases discrepancy is with regard to one vote. In many cases one vote each was found in excess. I have perused the ballot paper accounts in these cases and in many cases wrong figure was given by the presiding officer regarding the ballot paper account. For example in Ext. X-44, 788 ballot papers were shown to have been received by the presiding officer. However, on a perusal of the serial number of the ballot papers issued to the Presiding Officer it is clear that 789 ballot papers were used in polling booth No. 96 of Alathur constituency. In this way several of the mistakes could be explained.

46. In Mannarghat L. A. segment in polling station No. 20 and 113 the total number of votes counted was 834 and 681 respectively. However, the ballot paper account showed that the number of votes polled was 833 and 680, respectively. So also in polling booth No. 76 and 103 of Kollamgode one vote each was found in excess of the total number of votes polled. In various other cases one vote each was found missing. The learned counsel for the petitioner pointed out the discrepancy in this regard. I have perused form 16 and 20 in these instances. One vote was found missing in the various polling stations, such as, 87, 120, 9, 13, 48, 52, 54, 67, 90 and 96 of Shrikrishnapuram segment, and respect of polling station No. 39, 70, 90, 91, 140, 6, 53, 86, 120 and 45 of Mannarghat segment one vote

each was found missing. So also, in some other polling stations of Malampuzha, Alathur Palghat and Chittoor there were discrepancies between the number of votes to be found in the ballot box and the number of votes counted, PW1, the returning officer, could not explain as to how these discrepancies arose. It may be due to clerical or arithmetical error. It may be also due to some persons taking the ballot paper out of the polling booth without inserting it in the ballot box. It is important to note that the number of votes found missing was marginal when compared to the total number of votes polled. It cannot be assumed that there was any illegality or corrupt practice and the missing of votes has been caused due to any malpractice. The petitioner had no serious allegations regarding the missing of votes. When the votes were counted in the presence of the counting agents, they had not raised any objection. The counsel for the petitioner contended that all these discrepancies could be set asight only by a recount. I am not inclined to accept this contention, since no malpractice or illegality could be inferred from the circumstances.

47. The learned counsel for the petitioner vehemently contended that in view of the various discrepancies and mistakes that have crept in from 16 and 20, the entire ballot papers are to be examined and re-counting is to be allowed. This is seriously opposed by the first respondent. It is well settled by the various decisions of the Supreme Court that a recount of ballot papers could be allowed only under special circumstances and inspection of the ballot papers should not be allowed in such a way as to make a roving of fishing inquiry in order to discover material for declaring the election void. The Supreme Court in one of its earliest decisions viz., *Bhabhi v. Sheo Govind and others* (1975 Supp. S.C.R. 202) held that the following conditions should be fulfilled before a court can grant inspection of the ballot papers.

- “(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
- (2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;
- (3) The Court must be *prima facie* satisfied on the material produced before the Court regarding the truth of the allegations made for a recount;
- (4) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and
- (5) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the *prima facie* satisfaction of the Court regarding the truth of the allegations made for a recount and not for the purpose of fishing out materials.”

48. The Supreme Court in *Jitendra Bahadur Singh v. Krishna Behari and Ors.* [1979(1) S.C.R. 852] emphasised the importance of maintaining the secrecy of ballot papers and held the scrutiny can only be ordered if the election petition contains an adequate statement of the material facts on which the petitioner relies, that is the material facts disclosed must afford an adequate basis for the allegations and the election tribunal must be *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

49. In *Charan Singh v. Shiv Ram Verma* [1975(4) S.C.C. 393] the Supreme Court reaffirmed that recount of ballot papers should not be allowed on the mere request. The

Court observed that certain amount of stability in the process of election is essential. If the counting of the ballots are interfered with by two frequent and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover the secrecy of the ballot which is sacrosanct becomes exposed to deleterious praying if recount of votes is made easy. The law on the point has been succinctly held by various decisions of the Supreme Court and it is clear that a recount will not be allowed as a matter of right, but only on the basis of evidence of good ground for believing that there has been a mistake in the counting. It is also clear that the recount would be allowed if sufficient allegations are made in the petition and these allegations are *prima facie* proved. It is also pertinent to note that in *D. P. Sharma v. Commissioner and Returning Officer* (1984 Supp. S.C.C. 157) the Supreme Court refused to order inspection and recount of ballot papers holding that the discrepancy between the total number of ballot papers issued and total number of ballot papers taken out and counted was marginal and insignificant and attributable to accidental slip or clerical or arithmetical mistake.

50. In the instant case also the mistakes, if any, pointed out by the petitioner are either arithmetical or clerical mistakes. The discrepancy between the number of votes to be found in the ballot box and the number of votes counted was only marginal and the difference could be explained satisfactorily. In a parliament election where more than 6 lakhs votes are counted there may occur some mistakes either arithmetical or clerical. The petitioner has no case that there was serious irregularity in the conduct of election. The petitioner has no case that there was large-scale rigging or impersonation or casting of spurious votes. The counting was done in the presence of the petitioner's agents. The petitioner filed an application for recount on 26-11-89. In the application he has only mentioned that he has got some suspicion regarding the counting of votes of Chittoor, Malampuzha and Alathur and therefore the ballot papers are to be recounted. One Kumaraswamy, the chief counting agent of 11th respondent, also filed an application on 28-11-1989 before the Assistant Returning Officer, Malampuzha alleging that the counting of votes was not satisfactory. One P. R. Suresh, the counting agent of the petitioner, filed Ext. A5 application alleging that he had doubts regarding the counting of votes in the parliamentary election in respect of Mannarghat, L. A. segment and he prayed for recount. In all these petitions there are no allegations that the counting was not done properly. There is no allegation that any valid votes were rejected or any invalid votes were accepted. Regarding the rejection of the postal ballot papers also none of the candidates had any objection. Not a single instance of irregularity has been pointed out in these petitions for recount. The petitioner has also not chosen to examine any of the assistant returning officers, who participated in the counting to prove the alleged irregularity, if any.

51. The petitioner has not succeeded in proving any of the illegalities or corrupt practices alleged in the petition. Therefore, I hold that under issue No. 3 and 16 that there was no serious error in counting of votes and inspection or recount of the votes is necessary and under issue No. 15 I hold that the election of the first respondent is not liable to be set aside for any of the reasons mentioned in the petition.

52. Issue No. 17.—In view of my above findings the election of the returned candidate is not liable to be set aside. The election petition fails and it is dismissed. The petitioner shall pay cost of Rs. 1000 to the first respondent.

31st August, 1990.

Sd/-

K. G. BALAKRISHNAN, Judge.

APPENDIX

Petitioner's witnesses :

1. Jiji Thomson, District Collector
2. P. R. Sureh
3. C. Parameswaran
4. E. Kannan
5. M. Sundarajan
6. A. Kunturajwamy
7. K. Sargun
8. Abbas Abdul Khader
9. K. Hamsa
10. V. M. Ibrahim
11. Sakumiran Krishnan
12. E. Abbas
13. Gopalakrishnan
14. Abdul Razack
15. V. S. Vijaya Raghavan

Respondents' witnesses :

1. C. T. Krishnan

Petitioner's Exhibits :

Ext. A1	—	Annexure 1 of E.P.	page 28	Form 21E (Return of election)
Ext. A(1)	—	Annexure 6 of E.P.,	Page 85	Form 16 Part-I Ballot Paper Account.
Ext. A2(1)	—	86 of E.P.
Ext. A(3)	—	87
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Ext. A2(48)	—	Annexure 6 of E.P.	Page	134 of E.P.	Form 16 Part I
Ext. A2(49)	—	"	"	135	Ballot paper Account
Ext. A2(50)	—	"	"	136	"
Ext. A2(51)	—	"	"	137 of E.P.	"
Ext. A2(52)	—	"	"	138	"
Ext. A2(53)	—	"	"	139	"
Ext. A2(54)	—	"	"	140	"
Ext. A2(55)	—	"	"	141	"
Ext. A2(56)	—	"	"	142	"
Ext. A2(57)	—	"	"	143	"
Ext. A2(58)	—	"	"	144	"
Ext. A2(59)	—	"	"	145	"
Ext. A2(60)	—	"	"	146	"
Ext. A2(61)	—	"	"	147	"
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Ext. A2(63)	—	"	"	149	"
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Ext. A2(80)	—	"	"	167	"
Ext. A2(81)	—	"	"	168	"
Ext. A3(1)	—	Annexure 4 of E.P.	Pages	39 to 44	Form 20 (Final result sheet) Sreekrishnapuram L.A. Segment.
Ext. A3(2)	—	"	"	45 to 50	Mannarghat L.A. Segment.
Ext. A3(3)	—	"	"	51 to 55	Malampuzha "
Ext. A3(4)	—	Annexure 4 of E.P.	Pages	56 to 60	Form 20 of Palghat L.A. Segment
Ext. A3(5)	—	"	"	61 to 67	Chittoor
Ext. A3(6)	—	"	"	68 to 75	Kallamgode
Ext. A3(7)	—	"	"	76 to 81	Alathur.
Ext. A4	—	Pages 82 to 84 in the E.P.			Form 20 Final Result Sheet.
Ext. A5	—	Page 174 of the E.P.			Petition for recounting filed by PW2.
Ext. A6	—	Page 176 of the E.P.			Proceedings of PW1 rejecting the request for recount.
Ext. A7	—	Page 190 of the E.P.			Form 19
Ext. A8	—	Page 189 of the E.P.			Petition by E. Kannan
Ext. A9	—	Page 187 of E.P.			Petition by P. Suresh.
Ext. A10	—	Page 5 electoral rolls (Voter's list) Mannarghat L.A. segment.			
Ext. A11	—	Page 15 of Electoral rolls, Polling Station 65 of Sreekrishnapuram L.A. segment.			
Ext. A12	—	Page 157 of E.P. Form 16 Part-I (53/129) Alathur.			
Ext. A13	—	Voter's list of Sreekrishnapuram L. A. segment.			
Ext. A14	—	Voter's list of Alathur L. A. Segment (Polling Station 19)			
Ext. A15	—	Page 190 of E.P. Notice by Imam			
Ext. A16	—	Page 195 of E. P. Newspaper Desabhimani dated Nov. 16th, 1989.			
Ext. A17	—	" " dated 17 Nov., 1989.			
Ext. A18	—	" " dated Nov., 12, 1989			
Ext. A19	—	" Madhyamam dated Nov., 12, 1989			

COURT EXHIBITS

Ext. X1	—	Account for the receipt of Ballot papers dated 26-11-89
Ext. X2	—	Cover rejected for want of attestation.
Ext. X3	—	Petition filed by the petitioner dated 26-11-89 for recounting.

Ext. X4	Petition filed by Kumaraswamy dated 26-11-89
Ext. X5	Reply dated 27-11-89 by PWI rejecting Ext. X3 petition
Ext. X6	Form 16 Part I Ballot paper account No. I Palghat—Polling station 31, Pudupariyaram.
Ext. X7	Form 16—Part-I Ballot Paper Account, 51 Kollengode
Ext. X8	Form 16 „ 7 Palghat
Ext. X9	„ „ 46 Sreekrishnapuram
Ext. X10	Form 16 Part-II 47 Mannarghat
Ext. X11	Form 41—Check Memo for (Mannarghat) counting votes
Ext. X12	Form 16 Part-I 53/101 Alathur
Ext. X13	Form 16 Part-I Palghat, Lakshmi Narayanapuram polling station.
X13(a)	Form 16 Part-II
Ext. X14	Blank Ballot Paper
Ext. X15	Part -II—Result of counting (No. Part-I)
Ext. X16	Final Result Sheet,
Ext. X17	File relating to polling station 48 of Malampuzha (Part I Form 16 Ballot Paper account)
Ext. X18	Final Result Sheet
Ext. X19	Form 20—Final Result Sheet
Ext. X20	Form 21—Return of election
Ext. X21 Series	
X21(1) to X21 (62)	Declaration in respect of postal ballot papers rejected.
Ext. X22	Declaration in respect of postal votes. (Covers)
Ext. X23	-do-
Ext. X24	Covers (postal votes) rejected.
Ext. X25	-do-
Ext. X26	-do-
Ext. X27	-do-
Ext. X28 (1)	-do-
to	
X28(8)	
Ext. X29	-do-
Ext. X30 Series	
X30(1) to X30 (5)	-do-
Ext. X31	Voter's list--Mannarghat L. A. segment polling station No. 42,
Ext. X32	„ „ „ No. 98
Ext. X33	Form 16 Part-I Sreekrishnapuram
&	
X33(a)	Form 16 Part-II Polling station No. 89 Sreekrishnapuram
Ext. X34	Form 16 Part-I Mannarghat, polling Station No. 5
„ X34(a)	Form 41 „ „
Ext. X35	Form 16 Part-I , polling station No. 77, Mannagarghat
„ X35(a)	Form 41 Part -II „
Ext. X36	Form 16 Part-I, polling station No. 85, Malampuzha
„ X36(a)	„ Part-II „
Ext. X37	Form 16 Part I & II polling station No. 92, Malampuzha
„ X37(a)	
Ext. X38	Form 16 Part I, polling Station No. 74 Malampuzha
„ X38(a)	„ Part II, „
Ext. X39	„ Part I „ No. 50 Palghat
„ X39(a)	„ Part II „ „
Ext. X40	„ Part I „ No. 104 Rollengode
„ X40(a)	„ Part II „ „
Ext. X41	„ Part I „ No. 64 Chittur
„ X41(a)	„ Part II „ „
Ext. X42	„ Part I „ No. 30 Chittur
„ X42(a)	„ Part II „ „
Ext. X43	„ Part I „ No. 33 Chittur
„ X43(a)	„ Part II „ „
Ext. X44	„ Part I „ No. 96 Alathur
„ X44(a)	„ Part II „ „
Ext. X45	„ Part I „ No. 125 Alathur
„ X45(a)	„ Part II „ „
Ext. X46	„ Part I „ No. 9 Sreekrishnapuram
„ X46(a)	„ Part II „ „

Ext. X47	—	„ Part I	„ No. 13	„
„ X47(a)	—	„ Part II	„ „	„
Ext. X48	—	„ Part I	„ No. 48	Sreekrishnapuram
„ X48(a)	—	„ Part II	„ „	„
Ext. X49	—	„ Part I	„ No. 51	„
„ X49(a)	—	„ Part II	„ „	„
Ext. X50	—	„ Part I	„ No. 54	„
„ X50(a)	—	„ Part II	„ „	„
Ext. X51	—	„ Part I	„ No. 67	„
„ X51(a)	—	„ Part II	„ No. 67	„
Ext. X52	—	Form 16 Part I, polling station	„ No. 70	Sreekrishnapuram
„ X52(a)	—	„ Part II	„ „	„
Ext. X53	—	„ Part I	„ No. 90	„
„ X53(a)	—	„ Part II	„ „	„
Ext. X54	—	„ Part I	„ No. 96	„
„ X54(a)	—	„ Part II	„ „	„
Ext. X55	—	„ Part I	„ No. 111	„
„ X55(a)	—	„ Part II	„ „	„
Ext. X56	—	„ Part I	„ No. 116	„
„ X56(a)	—	„ Part II	„ „	„
Ext. X57	—	„ Part I	„ No. 118	„
„ X57(a)	—	„ Part II	„ „	„
Ext. X58	—	„ Part I	„ No. 121	„
„ X58(a)	—	„ Part II	„ „	„
Ext. X59	—	„ Part I	„ No. 128	„
„ X59(a)	—	„ Part II	„ „	„
Ext. X60	—	„ Part I	„ No. 130	„
„ X60(a)	—	„ Part II	„ „	„
Ext. X61	—	„ Part I	„ No. 6	Mannarghai
„ X61(a)	—	„ Part II	„ „	„
Ext. X62	—	„ Part I	„ No. 53	„
„ X62(a)	—	„ Part II	„ „	„
Ext. X63	—	„ Part I	„ No. 86	„
„ X63(a)	—	„ Part II	„ „	„
Ext. X64	—	„ Part I	„ No. 120	„
„ X64(a)	—	„ Part II	„ „	„
Ext. X65	—	„ Part I	„ No. 145	„
„ X65(a)	—	„ Part II	„ „	„
Ext. X66	—	„ Part I	„ No. 45	Malampuzha
„ X66(a)	—	„ Part II	„ „	„
Ext. X67	—	„ Part I	„ No. 46	„
„ X67(a)	—	„ Part II	„ „	„
Ext. X68	—	„ Part I	„ No. 66	„
„ X68(a)	—	„ Part II	„ „	„
Ext. X69	—	„ Part I	„ No. 71	„
„ X69(a)	—	„ Part II	„ „	„
Ext. X70	—	„ Part I	„ No. 78	„
„ X70(a)	—	„ Part II	„ „	„
Ext. X71	—	„ Part I	„ No. 110	„
„ X71(a)	—	„ Part II	„ „	„
Ext. X72	—	Form 16 Part I polling Station	„ No. 112	Malampuzha
„ X72(a)	—	„ Part II	„ „	„
Ext. X73	—	„ Part I	„ No. 8	Palghat
„ X73(a)	—	„ Part II	„ „	„
Ext. X74	—	„ Part I	„ No. 22	„
„ X74(a)	—	„ Part II	„ „	„
Ext. X75	—	„ Part I	„ No. 24	„
„ X75(a)	—	„ Part II	„ „	„
Ext. X76	—	„ Part I	„ No. 35	„
„ X76(a)	—	„ Part II	„ „	„
Ext. X77	—	„ Part I	„ No. 51	„
„ X77(a)	—	„ Part II	„ „	„
Ext. X78	—	„ Part I	„ No. 99	„
„ X78(a)	—	„ Part II	„ „	„
Ext. X79	—	„ Part I	„ No. 117	„
„ X79(a)	—	„ Part II	„ „	„

Ext. X80	From 16	Part I	Polling station No. 120	„
„ X80(a)	„	Part II	„	„
Ext. X81	„	Part I	„ No. 6	Chittur
„ X81(a)	„	Part II	„	„
Ext. X82	„	Part I	„ No. 7	„
„ X82(a)	„	Part II	„	„
Ext. X83	„	Part I	„ No. 35	„
„ X83(a)	„	Part II	„	„
Ext. X84	„	Part I	„ No. 53	„
„ X84(a)	„	Part II	„	„
Ext. X85	„	Part I	„ No. 60	„
„ X85(a)	„	Part II	„	„
Ext. X86	„	Part I	„ No. 70	„
„ X86(a)	„	Part II	„	„
Ext. X87	„	Part I	„ No. 74	„
„ X87(a)	„	Part II	„	„
Ext. X88	„	Part I	„ No. 104	„
„ X88(a)	„	Part II	„	„
Ext. X89	„	Part I	„ No. 108	„
„ X89(a)	„	Part II	„	„
Ext. X90	„	Part I	„ No. 98	Kollengode
„ X90(a)	„	Part II	„	„
Ext. X91	„	Part I	„ No. 117	„
„ X91(a)	„	Part II	„	„
Ext. X92	„	Part I	„ No. 124	„
„ X92(a)	„	Part II	„	„
Ext. X93	„	Part I	„ No. 74	„
„ X93(a)	„	Part II	„	„
Ext. X94	„	Part I	„ No. 68	Alathur
„ X94(a)	„	Part II	„	„
Ext. X95	„	Part I	„ No. 69	„
„ X95(a)	„	Part II	„	„
Ext. X96	„	Part I	„ No. 71	„
„ X96(a)	„	Part II	„	„
Ext. X97	„	Part I	„ No. 90	„
„ X97(a)	„	Part II	„	„
Ext. X98	„	Part I	„ No. 127	„
„ X98(a)	„	Part II	„	„
Ext. X99	„	Part I	„ No. 129	„
„ X99(a)	„	Part II	„	„
Ext. X100	Form 15		„ No. 90	Sreekrishnapuram
Ext. X101	„		„ No. 65	„
Ext. X102	„		„ No. 23	Malampuzha
Ext. X103	„		„ No. 17	Palghat
Ext. X104	„		„	„
Ext. X105	„		„ No. 55	Kollengode
Ext. X106	„		„ No. 47	Mannarghat
Ext. X107	„		„ No. 20	„
Ext. X108	„		„ No. 28	„
Ext. X109	„		„ No. 49	„
Ext. X110	„		„ No. 72	„
Ext. X111	„		„ No. 85	„
Ext. X112	„		„ No. 98	Mannarghat
Ext. X113	„		„ No. 100	„
Ext. X114	Entire tile (Final Result Sheet)			
Ext. X115	Form 16	Part I	Polling Station	No. 20 Mannarghat
„ X115(a)	„	Part II	„	„
Ext. X116	„	Part I	„ No. 39	„
„ X116(a)	„	Part II	„	„
Ext. X117	„	Part I	„ No. 70	„
„ X117(a)	„	Part II	„	„

Ext. X118	Form 16	Part I	Polling Station	No. 78	Mannarghat
„ X118(a)	„	Part I	„	„	„
Ext. X119	„	Part I	„	No. 90	„
„ X119(a)	„	Part II	„	„	„
Ext. X120	„	Part I	„	No. 91	„
„ X120(a)	„	Part I	„	„	„
Ext. X121	„	Part I	„	No. 98	„
„ X121(a)	„	Part II	„	„	„
Ext. X122	„	Part I	„	No. 113	„
„ X122(a)	„	Part II	„	„	„
Ext. X123	„	Part I	„	No. 140	„
„ X123(a)	„	Part II	„	„	„
Ext. X124	„	Part I	„	No. 32	Malampuzha
„ X124(a)	„	Part II	„	„	„
Ext. X125	„	Part I	„	No. 91	„
„ X125(a)	„	Part II	„	„	„
Ext. X126	„	Part I	„	No. 104	Sreekrishnapuram
„ X126(a)	„	Part II	„	„	„
Ext. X127	„	Part I	„	No. 123	„
„ X127(a)	„	Part II	„	„	„
Ext. X128	„	Part I	„	No. 25	„
„ X128(a)	„	Part II	„	„	„
Ext. X129	„	Part I	„	No. 28	„
„ X129(a)	„	Part II	„	„	„
Ext. X130	„	Part I	„	No. 87	„
„ X130(a)	„	Part II	„	„	„
Ext. X131	„	Part I	„	No. 120	„
„ X131(a)	„	Part II	„	„	„
Ext. X132	„	Part I	„	No. 125	„
„ X132(a)	„	Part II	„	„	„
Ext. X133	„	Part I	„	No. 3	Kollengode
„ X133(a)	„	Part II	„	„	„
Ext. X134	„	Part I	„	No. 21	„
„ X134(a)	„	Part II	„	„	„
Ext. X135	„	Part I	„	No. 54	„
„ X135(a)	„	Part II	„	„	„
Ext. X136	„	Part I	„	No. 94	„
„ X136(a)	„	Part II	„	„	„
Ext. 137	„	Part I	„	No. 76	„
„ X137(a)	„	Part II	„	„	„
Ext. X138	„	Part I	„	No. 103	„
„ X138(a)	„	Part II	„	„	„
Ext. X139	„	Part I	„	No. 26	Palghat
„ X139(a)	„	Part II	„	„	„
Ext. X140	„	Part I	„	No. 33	„
„ X140(a)	„	Part II	„	„	„
Ext. X141	„	Part I	„	No. 81	Chittoor
„ X141(a)	„	Part II	„	„	„
Ext. X142	„	Part I	„	No. 91	„
„ X142(a)	„	Part II	„	„	„
Ext. X143	„	Part I	„	No. 109	„
„ X143(a)	„	Part II	„	„	„
Ext. X144	„	Part I	„	No. 21	Alathur
„ X144(a)	„	Part II	„	„	„
Ext. X145	„	Part I	„	No. 40	„
„ X145(a)	„	Part II	„	„	„
Ext. X146	„	Part I	„	No. 116	„
„ X146(a)	„	Part II	„	„	„
Ext. X147	Original Copies of Result Sheet.				
Ext. X148	Form 16	Part II	Polling Station	No. 146	Mannarghat.

K.G. Balakrishanan, Judge
[No. 82/KL-HP/2/90]
C. L. EROS, Secy.
Election Commission of India

आदेश

नई दिल्ली, 7 फरवरी, 1991

आ. प्र. 30 :-निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ 2 में यथा विनिर्दिष्ट पश्चिम बंगाल राज्य के लोक सभा के लिए निर्वाचन, 1989 और विधान सभा के लिए निर्वाचन, 1987 जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दक्षित अपने निर्वाचन व्ययों का लेखा व्यय के अन्तर्गत और/अथवा अपेक्षित रीति से दाखिल करने में असफल रहा है ;

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए न तो कोई कारण न ही स्पष्टीकरण दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्यावस्थित नहीं है ;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है ।

सारणी

क्रम. सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थियों का नाम और पता	निरहता का कारण
1	2	3	4	5
1. लोक सभा के लिए साधारण निर्वाचन 1989		3-जलपाई गुड़ी संसदीय निर्वाचन क्षेत्र	श्री इन्द्र प्रसाद चौहान, डा. व राम लतागुड़ी, जिला - जलपाईगुड़ी, पश्चिम बंगाल।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2. लोकसभा के लिए साधारण निर्वाचन, 1989		5-रायगंज संसदीय निर्वाचन क्षेत्र	श्री महमूदीन अहमद, गांव - कुहूला, डा. बारा मजलिस- भीतर लेखा दाखिल करने में पुर, जिला पश्चिम दिनाजपुर, पश्चिम बंगाल।	विधि द्वारा अपेक्षित समय के अंदर लेखा दाखिल करने में असफल रहे।
3. -वही-		6-बाबूरघाट (घ. जा.) संसदीय निर्वाचन क्षेत्र	1. श्री नृपेन्द्र बर्मन, गांव - खिराता, डा. - करामोहेन- नेहरा, जिला-पश्चिम दिनाजपुर, पश्चिम बंगाल।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
4. -वही-		-वही-	2. श्री भागीरथ बर्मन, गांव - झिकूल, डा. - जालंधर, जिला - पश्चिम दिनाजपुर, पश्चिम बंगाल।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
5. विधान सभा के लिए साधारण निर्वाचन, 1987		231-झाड़ग्राम विधान सभा निर्वाचन-क्षेत्र	श्री जितय महता, गांव - पुकरिया, डाक - पुकरिया, जिला - दिनाजपुर, पश्चिम बंगाल।	विधि द्वारा अपेक्षित रीति से लेखा दाखिल करने में असफल रहे।

[सं. 76/प. ब. - लो. स./90]

आदेश से,

बाबू राम, अधर सचिव

ORDER

New Delhi, the 7th February, 1991

O.N. 30.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the House of the People, 1989 and Legislative Assembly, 1987 from the State of West Bengal as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses or failed to lodge the account within the time and or in the manner, as shown in column (5) of the said Table, required by the Representation of the People, Act, 1951 and Rules made thereunder;

And whereas the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of State/Union Territory for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	S. No. & Name of constituency	Name & address of candidates	Reason for disqualification
1	2	3	4	5
1.	General Election to the House of the People, 1989	3—Jalpaiguri Parliamentary Constituency	Shri Indra Prasad, Chowhan, P.O. & Village Lataguri Dist., Jalpaiguri, W.B.	Failed to lodge any account of election expenses
2.	-do-	5—Raiganj Parliamentary Constituency	Shri Mahamuddin Ahmed, Vill. Kurhala P. O. Bara Majlishpur, Dist. West Dinajpur West Bengal.	Failed to lodge the account within the time required by law.
3.	-do-	6—Balurghat (SC) Parliamentary Constituency	Shri Nripendra Burman, Vill. Khiratta, P. O. Karaiohenchra, Dist. West Dinajpur West Bengal	Failed to lodge any account of election expenses
4.	-do-	-do-	Shri Bhagirath Burman, Vill. Trikul, P. O. Jalghar, Distt. West Dinajpur, West Bengal.	-do-
5.	General election to the Legislative Assembly, 1987	231—Jhargram Assembly Constituency	Shri Binoy Mahata, Vill. Pukuria, Dist. Midnapore West Bengal.	Failed to lodge the account in the manner required by law.

[No. 76/WB—HP/90]

By Order,

BABU RAM, Under Secy.